

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY ANKARA

AMCONSUL ISTANBUL

AMCONSUL ADANA

AMCONSUL IZMIR

C O N F I D E N T I A L STATE 098820

E.O.11652: GDS

TAGS: CASC, TU

SUBJECT: WILLIAM HAYES CASE

REFS: (A) ANKARA 3227; (B) ANKARA 3457; (C) STATE 78273

1. PRIMIN ECEVIT'S SUGGESTION PARA 2 OF REF B IS ESSENTIALLY THAT DISCUSSED WITH PROF ALACAKAPTAN AS PER PARA 3C REF A. BECAUSE ECEVIT'S SUGGESTION HAS THE TONE OF A FIRM OFFER, WE HAVE SOUGHT TO FIND THE MOST POSITIVE RESPONSE POSSIBLE. DIFFICULTY IS WITH GOT CONDITION REQUIRING "U.S. AGREEMENT THAT TURKISH PRISONERS IN U.S. (IF ANY) COULD BE RETURNED TO TURKEY IN THE SAME WAY." EMBASSY OF COURSE AWARE THAT FEDERAL AND STATE CRIMINAL PROCESSES PRECLUDE ANY SUCH FIRM COMMITMENT, BUT IT MAY BE POSSIBLE TO PROVIDE A MORE LIMITED UNDERTAKING.

2. THERE ARE AT LEAST THREE POINTS IN THE U.S. CRIMINAL PROCESS WHERE SOME DISCRETION MAY BE EXERCISED: PROSECUTION, SENTENCING AND PAROLE. INTEGRITY OF THE CRIMINAL
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PROCESS REQUIRES THAT THE DECISION TO PROSECUTE MUST NOT

BE SUBJECT TO CONSTRAINTS FROM EXTERIOR SOURCES, AND SENTENCING AND PAROLE DECISIONS ARE MADE BY INDEPENDENT BODIES OVER WHICH EXECUTIVE BRANCH HAS NO CONTROL. HOWEVER, IF IT WILL ACCOMPLISH OUR GOAL IN RESPECT TO HAYES (AND PERHAPS AT SOME POINT THE ANTAKYA 3), THE DEPT-- NOT THE USG--CAN UNDERTAKE TO DO WHAT IT WOULD DO IN ANY

CASE IF REQUESTED. YOU MAY INFORM ECEVIT THAT THE DEPT WOULD BE WILLING TO CONSIDER, IN APPROPRIATE CASES, MAKING RECOMMENDATIONS TO FEDERAL OR STATE PROSECUTORS IN RESPECT TO THE PROSECUTION, SENTENCING OR PAROLE OF NON-RESIDENT ALIEN TURKISH NATIONALS WHO WOULD BE PREPARED VOLUNTARILY TO DEPART THE U.S. IF PERMITTED TO DO SO. THUS, IN APPROPRIATE CASES, DEPT COULD REQUEST PROSECUTORS TO (A) WITHHOLD PROSECUTION, (B) REQUEST COURT TO WITHHOLD SENTENCING OR SUSPEND SENTENCE, OR (C) REQUEST PAROLE BOARD TO PAROLE PRISONER--ALL SUBJECT TO VOLUNTARY DEPARTURE OF TURKISH NATIONAL IN QUESTION.

3. IF THE FOREGOING IS TRANSMITTED TO GOT, A NUMBER OF POINTS SHOULD BE MADE CLEAR:

(A) HAYES CANNOT SERVE HIS SENTENCE IN U.S. IN JAIL, BUT ONLY IN THE "COURTESY SUPERVISION OF PAROLE" STATUS OUTLINED REF (C).

(B) ANY ARRANGEMENT OF THIS KIND INVOLVING RELEASE OF HAYES AND DEPT UNDERTAKINGS IN RESPECT TO TURKS IN U.S. SHOULD BE INFORMAL AND UNPUBLICIZED. WE WOULD PREFER NO WRITTEN DOCUMENT, CERTAINLY NOT A FORMAL ONE.

(C) DEPT CANNOT PROVIDE ASSURANCE IN ADVANCE THAT IT WILL CONSIDER ANY PARTICULAR CASE APPROPRIATE FOR INTERCESSION WITH PROSECUTORS. AS PRESUMABLY GOT HAS DONE WITH HAYES AND ANTAKYA 3, WE MUST CONSIDER EACH CASE ON ITS MERITS. (FYI. FRANKLY, WE CAN ENVISION FEW SUCH APPROPRIATE CASES. END FYI.)

(D) DEPT HAS NO LEGAL RIGHT TO INTERFERE IN CRIMINAL PROCESS AT ANY STAGE; IT CAN ONLY RECOMMEND. AS TO CONFIDENTIAL

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SENTENCING AND PAROLE, PROSECUTORIAL OFFICERS CAN ONLY MAKE RECOMMENDATION TO COURTS OR PAROLE BOARDS, WHICH HAVE INDEPENDENT AUTHORITY.

4. RE PARA 3B, REF A: JUSTICE HAS INDICATED PROSECUTION OF HAYES PRESENTS NUMEROUS PROBLEMS, NOT LEAST OF WHICH IS LACK OF ANY ATTEMPT STATUTE RELEVANT TO NARCOTICS IN EFFECT BEFORE MAY 1, 1971. IN THE ABSENCE OF ANY EVIDENCE

OF CONSPIRACY (AND WE UNDERSTAND THERE IS NONE), THERE IS
NO BASIS IN U.S. LAW FOR PROSECUTION OF HAYES. BELIEVE
THIS APPROACH NOT FRUITFUL. RUSH

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